

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

(1) MICHELE L. SIMS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 13-CV-99-TCK-PJC
)	(formerly Tulsa County
(1) UNUM LIFE INSURANCE COMPANY)	Case No. CJ-2013-370)
OF AMERICA,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Unum Life Insurance Company of America (“Unum”) hereby gives notice of the removal of this action from the District Court of Tulsa County, State of Oklahoma (styled: *Michelle L. Sims v. Unum Life Insurance Company of America*, Case No. CJ-2013-369) to the United States District Court for the Northern District of Oklahoma.¹ In support of this Notice, Unum sets forth as follows:

I. PROCEDURAL BACKGROUND

1. On January 22, 2013, Plaintiff filed a Petition against Unum in the District Court of Tulsa County, State of Oklahoma. A copy of the Petition is attached as Exhibit “1.” *See* 28 U.S.C. § 1446(a). Unum was served with Summons on January 29, 2013, by service upon the Oklahoma Insurance Commissioner. A copy of the Summons and letter

¹ No admission of fact, law or liability is intended by this Notice of Removal, and Unum expressly reserves all defenses, affirmative defenses and motions otherwise available to them.

from the Insurance Commissioner of the State of Oklahoma are attached hereto as Exhibits “2” and “3,” respectively.

2. This action is removable pursuant to 28 U.S.C. § 1331, because it involves a claim to recover benefits and enforce rights under an employee welfare benefit plan regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* as amended (“ERISA”). The District Courts of the United States have original jurisdiction over actions brought to recover benefits and to enforce rights under employee welfare benefit plans, and such actions are controlled by federal law under ERISA. 29 U.S.C. §1132(e)(1); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987). Removal of such cases to federal court is proper.

3. The enforcement of rights under an employee welfare benefit plan is governed exclusively by federal law under ERISA. *Pilot Life Ins. Co.*, 481 U.S. at 41; *Metropolitan Life Ins. Co.*, 481 U.S. at 59. Thus, this action could have originally been filed in this Court pursuant to 28 U.S.C. § 1331 because it involves a federal question.

4. Plaintiffs’ remedies – if any – are provided for pursuant to ERISA at 29 U.S.C. § 1132(a)(1)(B). Accordingly, to the extent Plaintiff Petition has, or could be construed as having, raised any state statutory or common law claims, such claims are completely preempted by ERISA, and Plaintiff’s remedy, if any, is exclusively governed by ERISA and presents a federal question. *See e.g., Aetna Health Inc. v. Davila*, 542 U.S. 200, 208, 210, 124 S.Ct. 2488, 159 L.Ed.2d 312 (2004) (“if an individual, at some point in time, could have brought his claim under ERISA [§ 1132], and where there is no other

independent duty that is implicated by a defendant's actions, then the individual's cause of action is completely pre-empted by ERISA [§ 1132]."); *Hansen v. Harper Excavating, Inc.*, 641 F.3d 1216, 1220-21 (10th Cir. 2011); *Lind v. Aetna Health, Inc.*, 466 F.3d 1195, 1198 (10th Cir. 2006); *Cameron v. The Forest Hills IPA, Inc.*, 2009 WL 3334930, *3 (N.D. Okla. Oct. 13, 2009). Alternatively or additionally, supplemental jurisdiction exists over any claims which are not wholly preempted by ERISA pursuant to 28 U.S. § 1367.

5. This action is also removable pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between Plaintiff and Unum, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. *See* Exhibit 1, *Petition*, at ¶ 16. Unum is a corporation organized under the laws of a state other than Oklahoma with its principal place of business not in Oklahoma. *Id.* at ¶¶ 1-2. For purposes of removal jurisdiction, Unum is not a citizen of Oklahoma by reason of either its state of incorporation or its principal place of business, such that complete diversity of citizenship exists between Plaintiff and Unum.

6. A true and correct copy of all process, pleadings and orders served on or by all Defendants are attached hereto as separate exhibits, numbered as follows:

Exhibit "1": Petition;

Exhibit "2": Summons issued to Unum Life Insurance Company of America;

Exhibit "3": January 29, 2013 Letter from the Insurance Commissioner of the State of Oklahoma.

6. Pursuant to LCvR 81.2, a copy of the docket sheet in Case No. CJ-2011-9644 in the District Court of Tulsa County, State of Oklahoma, is attached hereto at Exhibit “4.”

7. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after the receipt by Defendants of a copy of the initial pleading setting forth the claim for relief.

8. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be promptly given to all adverse parties herein, and a copy will be filed with the Court Clerk of Tulsa County District Court, Oklahoma on the same date.

CONCLUSION

As the Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1332 and 1441, Defendant Unum Life Insurance Company of America prays that this Court will assume jurisdiction over this action and make such further orders herein as may be needed to properly resolve this controversy.

s/Matthew C. Kane
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ATTORNEYS FOR DEFENDANT
UNUM LIFE INSURANCE COMPANY
OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February 2013, a true and correct of the above and foregoing instrument was mailed, via U.S. First Class Mail, postage prepaid, to the following:

Terry L. Weber
320 South Boston, Suite 825
Tulsa, OK 74103
Terry.Weber@morelaw.com

s/Matthew C. Kane
MATTHEW C. KANE